

(1) Heard Mr. T. Son, learned counsel for the petitioners, Mr. A. Apang, learned State counsel and Mr. P. K. Tiwari, learned counsel for the respondent No. 7.

(2) In the instant writ petition the petitioners have challenged the legality and validity of an order awarding the carriage contract for carrying PDS items to the private respondent by the Deputy Commissioner, Along, vide order No. WS/sup-4212/99/pt-I, dated 10. 3. 2005. Challenge is also made to the decision of the respondent authorities enhancing the accepted rate of carriage charge @ Re. 0. 10 per quintal per K. M. to Rs. 3. 00 per quintal per K. M. , for the carriage contract awarded to the private respondent, during the subsistence of the contract period.

(3) On the basis of a tender notice issued by the Deputy Commissioner, Along, for awarding carriage contract to carry PDS items in the West Siang District, the petitioners as well as the private respondent along with others submitted their respective tenders by quoting their respective rates. The concerned authority after preparing the comparative statement of rates quoted by different tenderers , selected the private respondent and accordingly, vide the impugned order dated 10. 3. 2005 allotted the contract for carriage of the PDS items in his favour. An agreement was also executed between the parties incorporating the necessary terms and conditions. It may be stated herein that the aforesaid tender notice was issued by the Deputy Commissioner, along, vide memo No. WS/sup-4212/99-2000, dated 20. 5. 2004 and the period of the contract was for 2004-2005, i. e. , upto 31. 3. 2005. At the time of submitting the tender, all the tenderers including the private respondent executed an undertaking to the effect that it will keep the offered rate open valid upto 31. 3. 2005 or upto the period of contract whichever is later, carry out the carriage works at the accepted rates and shall not under any circumstances request for enhancement of rates during the validity period of contract.

(4) The Director of Civil Supplies, West siang District, vide its letter No. D CS/pds-Along/92 (Pt-II, dated 9. 7. 2004 accepted the rates at Re. 0. 10 per quintal per K. M. for the plains areas and Re. 0. 19 per quintal per k. M. for hilly areas. The aforesaid rates were accepted in terms of the approval of the Government vide letter No. 676, dated 8. 7. 2004. It is the case of the petitioners that immediately after the allotment of the contract, the private respondent approached the Deputy commissioner, Along, for enhancement of the rates from Re. 0. 10 per quintal per K. M. to rs. 3. 00 per quintal per K. M. as flat and uniform rate, inter alia, on the ground that the rates offered by him at the time of submission of tender was quoted on assumption of existence of good road condition throughout the district but later on it was found that in several areas there is no good road condition that there was hike in fuel price, spare parts and there occurs delay in payment of the bills. It is the case of the private respondent that he is facing heavy financial loss in executing the contract at his offered rate and accordingly, the rate should be enhanced to Rs. 3. 00 per quintal per K. M. uniformly. The aforesaid application was processed and a Board of five members was constituted by the Deputy commissioner, Along, for consideration of the prayer. The said Board recommended for enhancement of the rates from Rs. 0. 10 per quintal per K. M. to Rs. 3. 00 per quintal per K. M. Thereafter the Deputy Commissioner, along, vide letter No. WS/sup-4212/99/pt-I, dated 2. 11. 2004 intimated the Director of Civil Supplies, naharlagun, for increasing the rate of carriage contract from Rs. 0. 10 per quintal per K. M. to Rs. 3. 00 per quintal per K. M. Alleging illegality and arbitrariness in enhancing the rate of carriage contract during the subsistence of the contract, that too, after giving an undertaking by the private respondent not to pray for such enhancement of rates during the subsistence of the contract, the petitioners have approached this Court by filing

ing this writ petition with the prayer as indicate above.

(5) An affidavit-in-opposition has been filed by the State respondents as well as on behalf of the private respondent. In the affidavit-in-opposition of the State respondents, it is, inter alia, stated that the rates offered by the petitioners at the rate of Re. 0. 10 per quintal per K. M. for plains areas and Re. 0 . 19 for hilly areas were approved on the basis of the prayer made by the private respondent, the deputy Commissioner, Aligarh, recommended for enhancement of the said rates at the rate of Rs. 3. 00 per quintal per K. M. on uniform basis. It is further stated that the enhancement of rates was done afterward because of non-lifting of ban on head load system of carriage and it was made as per recommendation of the Board constituted by the Deputy Commissioner, Aligarh, constituted for the purpose. However, the said affidavit did not state anything about the expiry of the period of the contract as per terms of the tender notice and continuance of the private respondent with the contract in spite of expiry of the term. The private respondent in his affidavit tried to justify the necessity for enhancement, inter alia, on the ground of rise in fuel price, spare parts of the vehicle, deteriorated road condition, delay in payment of bills by Food Corporation of India and ban on head load system. It is further stated that the Government has introduced uniform rate at the rate of Rs. 3. 00 per quintal per K. M. in several other district of the State. On consideration of the aforesaid factors, the Board constituted by the Deputy Commissioner, Aligarh, has recommended enhancement of rates for carriage contract, which is required no interference.

(6) It is submitted by Mr. T. Son, learned counsel for the petitioners that enhancement of rate during the subsistence of a contract is violative of the terms of the contract and the express undertaking given by the private respondent. It is also submitted that the private respondent having accepted the terms and conditions of the tender with open eye quoted his rates and after getting the contract by submitting low rates and getting the contract, he wants to increase the rates during the subsistence of the period of contract, that too, thirty times more than the rates originally quoted by him and the same is per se arbitrary and not permissible under the law. The learned counsel for the State respondents and the private respondent have submitted that the aforesaid increase in rates had to be made on some relevant considerations and compelling circumstances, such as , rise in fuel price, spare parts of the vehicle, deteriorated road condition, delay in payment of bills by food Corporation of India and ban on head load system and accordingly, this Court in exercise of its writ jurisdiction should not interfere with the justifiability of the enhancement of the rates. However, Mr. P. K. Tiwari, learned counsel for the private respondent, has submitted that in fact the period of the contract as per tender notice has expired long back. But in view of the nature of the contract the private respondent has been allowed to continue with the same.

(7) I have considered the rival submissions made by the learned counsel for the respective parties and also perused the pleadings as well as materials available on records. There is no dispute at the Bar that the petitioners and the private respondent along with some others submitted their respective tenders for the carriage contract in question by offering their respective rates. The offer of Re. 0. 10 per quintal per K. M. for the plains areas and re. 0. 19 per quintal per K. M. for hilly areas made by the private respondent and the undertaking furnished by him to the effect that he will not pray for any enhancement of rates is also not in dispute; in fact, these are all admitted facts.

(8) Now the question to be decided as to whether during the subsistence of a contract, the respondent authorities are entitled to enhance the rate of contract that too, to the extent of thirty times more than the original offer. The contract in question is a non-statutory one. The terms and conditions of such non-statutory contract is regulated and guided by the terms and conditions of the tender notice and the agreement, if any, between the parties. At the time of allotment

t of the contract with the private respondent the lower rates quoted by him, at the rate of Re. 0. 10 per quintal per K. M. for plains areas and Re. 0. 19 per quintal per K. M. , was the vital consideration. All the tenderers while quoting rates in their respective tenders, before submission of tenders must have calculated their anticipated profits by taking into consideration the rates prevalent in the district for such carriage contract and other relevant considerations. If after the allotment of the contract the enhancement of rates is allowed to such a great extent it would not only loose the sanctity of the tender system itself but also it will cause loss of public exchequer. The members of the board constituted by the Deputy Commissioner, Along, who recommended the enhancement of rates of the contract, comprised of EAC (Judl.), as Chairman, BDO, DFFO, superintendent (T and E), and DSO (SUP) were none other than his subordinate officer only. The said Board is also constituted by the Deputy Commissioner, Along, himself. The board took into consideration in approving the enhancement of the rates the factors like rise in price of POL, cost of spare parts of the vehicle, expenditure of loading and un-loading and other incidental charges. The board also took note of the fact that almost all the enroute location and the Fair Price shops are located at remote locations and carrying PDS items to some of these locations is a very difficult task and the delay in releasing payment of the bills by the Food corporation of India authorities and interest on capital investment. Further the Board also observed that the Government has introduced uniform rate of Rs. 3. 00 per quintal per K. M. for carriage of PDS items by vehicular traffic. On such consideration, the Board approved the prayer for enhancement of the rates. The aforesaid consideration such as rise in fuel price, cost of spare parts of vehicle, expenditure of loading and unloading and other incidental charges as noted by the Board were; not the facts that emerged only after the allotment of the contract to the private respondent. In fact, these factors were very much in existence and existed at the time when the tenderers quoted rates in their respective tenders. The tenderers submitted their tenders by taking into account all such facts. These factors also do not pertain to viz. major principle. Accordingly , while approving such enhancement of rates neither the Board of officers had taken into consideration the relevant consideration justifying such enhancement of rates nor considered the fact that the private respondent had given undertaking not to pray for enhancement of rates. The decision taken by the respondent authorities for enhancing the rates of the carriage contract, if allowed to sustain would amount to impair the sanctity of the tender process, itself, where the amount of rate quoted was the main criteria for allotting such contracts. Therefore , I am constrained to hold that the said decision to enhance the rates from Re. 0. 10 per quintal per K. M. to Rs. 3. 00 per quintal per K. M. was taken on irrelevant considerations and without any proper application of mind ignoring public interest involved in it only for the benefit of the private respondent. Enhancement of existing rates of the contract awarded to the private respondent by thirty times more would consume a huge amount of money from the public coffer and that would certainly be against the public interest. That apart, had this enhanced rate been in vogue in the district at the time of submission of the tenders, certainly the parties would have offered higher rates for the contract. After submission and finalization of the tender the respondent authorities secretly negotiated with him to enhance the rate.

(9) On the aforesaid considerations, I hold that the impugned decision for enhancement of rates of contract of the private respondent was illegal, unjust and improper and against public interest. The said enhancement as per the recommendation of the Board dated 30. 11. 2004 as well as the proposal submitted by the Deputy Commissioner, Along, dated 2. 12. 2004 stands set aside and quashed. The terms of the contract as indicate herein above, has already been expired and this is admitted by the learned counsel for the parties. To allow the private respondent to continue with the contract after expiry of the contract is per se illegal and is against the decision taken by the State Government in this regard in the State Cabinet to the effect that there should be no pick and choose in allotting carriage contract and it should be made by floating tenders and after proper s

election in a transparent manner. Accordingly, it is directed that the respondent authorities shall forthwith issue necessary notice inviting tenders for allotment of the said carriage contract and the private respondent shall have no right to continue with the contract any more on the basis of the tender submitted by him for the period 2004-2005.

(10) In the result, this writ petition is allowed as indicated herein above. No costs.